

26 January 1972

Mr. J. F. C. Hyde, Jr.
Office of Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Hyde:

This is in reply to your request of 28 December 1971 for our views and recommendations on the Department of State's proposed report to Chairman Fulbright on S. Res. 192, which creates a "Select Committee to oversee activities of the Central Intelligence Agency."

The only apparent function of the proposed select committee would be legislative oversight of "the coordination of activities of United States Government departments and agencies, including the Department of Defense and the Central Intelligence Agency, operating abroad under the authority of the Ambassador and affecting the foreign relations of the United States." Exercise of this function by the select committee would not, however, relieve standing committees from their oversight responsibility with respect to the same departments and agencies. As noted by the Department of State in its proposed report, the organization of the Senate is a matter for the Senate to determine, even if the consequence is duplication of effort for executive departments or agencies.

S. Res. 192 would also require executive departments and agencies "which conduct activities abroad under the authority of any Ambassador of the United States [to] keep the select committee fully and currently informed of their activities abroad." The Ambassador is the personal representative of the President in a foreign country. Thus, in using language which reaches to activities "under the authority of any Ambassador," S. Res. 192 impinges on Presidential authority and poses a serious constitutional dilemma. If activities conducted under Presidential authority are to be "fully and currently" reported to a select committee of Congress, without regard for either the privilege or sensitivity involved, or the source of authority for conducting the activities in question, departments and agencies subject to such reporting requirements are placed in a completely untenable position.

Even if all references to the authority of the Ambassador were struck from S. Res. 192, the problem would not be solved for this Agency which by statute is subject to the direction of the President, as Chairman of the National Security Council (50 USC 403(d)). Just as any Ambassador in reporting to and furnishing advice to the President must have confidence in the privileged nature of his communications, so must this Agency in furnishing intelligence information requested by the President be confident that it can report fully and freely on the most sensitive intelligence subjects.


An additional and separate concern of this Agency is that activities abroad necessarily involve intelligence sources and methods. S. Res. 192 does not take cognizance of the statutory injunction which holds the Director of Central Intelligence responsible for protecting intelligence sources and methods. This Agency is responsible for assuring the flow of intelligence information and for instilling in human sources confidence in our ability to protect their identity. We believe that if S. Res. 192 is favorably considered, the Director of Central Intelligence should be given appropriate relief from the reporting requirements of the resolution in line with statutory precedent on this matter, such as the National Security Act of 1947 and the Central Intelligence Agency Act of 1949.

In view of the above, we support the proposed report by the State Department on S. Res. 192 only insofar as it states that the resolution may "impair the effective functioning of the Executive Branch in carrying out its constitutional responsibilities." However, we cannot subscribe to the State Department's contention that the State Department's suggested change in reporting requirements overcomes the inherent constitutional problems noted above. Therefore, we recommend that there be substituted for the second page of the proposed report language along the following lines:

"It is the Department's deeply held wish that the Congress receive information on the activities of the United States overseas in the detail and timeliness necessary to fulfill its constitutional responsibilities. It is believed that this can be accomplished under existing statutes and rules with which the Department, as well as the other departments and agencies affected, intend to continue to fully comply."

Sincerely,

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John M. Maury
Legislative Counsel